

**BOARD OF ENVIRONMENTAL PROTECTION**  
**Meeting Minutes**

July 15, 2004

A meeting of the Board of Environmental Protection was held on Thursday, July 15, 2004, at the Holiday Inn / Ground Round in Augusta, Maine. Richard Wardwell, Chair, called the meeting to order at 9:00 a.m. with the following individuals present:

**Board:** Ernest Hilton, Nancy Anderson, Donald Guimond, Virginia Plummer, Richard Wardwell, Nancy Ziegler, and Matt Scott

**Absent:** Irving Faunce and Jean T. Wilkinson

<b><u>Staff:</u></b>	Bureau of Air Quality	Jeff Crawford
	Bureau of Air Quality	Mike Karagiannes
	Office of the Commissioner	Malcolm Burson
	Bureau of Land and Water Quality	Dana Murch
	Bureau of Remediation and Waste Management	Jamie Tansey
	Bureau of Remediation and Waste Management	Paula Clark
	Bureau of Remediation and Waste Management	Cyndi Darling

**Others:** Dawn Gallagher, Commissioner  
Mary Sauer, Assistant Attorney General  
Jeff Pidot, Director Natural Resource Division, Attorney General (FPL only)  
Jon Edwards, Assistant Attorney General (FPL only)  
Cynthia Bertocci, Executive Analyst  
Terry Hanson, Administrative Assistant

***(Meeting adjourned at approximately 5:10 p.m.)***

**I. DEPARTMENTAL**

**A. COMMISSIONER'S COMMENTS:** Commissioner Dawn Gallagher reported the following:

Bonds: The Department is seeking public support for the Governor's Environmental Bond package by suggesting interested individuals and organizations contact their local legislators. Support is critical as the bond money funds important programs and serves as match money for US Environmental Protection Agency grants.

Budget: The Department is anticipating a directive to implement a flat funding and foresees cuts to the State's General Fund as a result of the projected fiscal year 06/07 and the outcome of the referendum vote on funding for education. The Department plans to review the current fee system and make adjustments in an effort to maintain funding for current programs. The Department's focus is on fee consistency throughout the agency. A stakeholder group will be part of the fee review and adjustment process.

Public Health and the Environment: The Department will be working with the Bureau of Health on approximately 12 issues associated with public health and the environment. A coordinated effort with the Bureau of Health will greatly assist the public health initiative.

Step Up / P2: The Pollution Prevention group is currently working with the gas station and auto maintenance industry. The first step is to provide information on the environmental impacts of this industry and to identify areas to reduce or eliminate environment hazards.

Global Climate Change: The Department will be presenting an over-view of the global climate change action plan later today. The climate change committee has moved the plan forward in many areas and will report back to the Legislature in October with recommendations.

**B. CHAIRMAN'S COMMENTS:** None

**C. EXECUTIVE ANALYST COMMENTS:**

Evergreen Windpower: The Board has received an appeal filed by Maine Audubon Society of the permit for the Evergreen Windpower project located in Mars Hills. No public hearing has been requested and the Board can expect to review this matter early this Fall.

Anne S. Hannum: The Board's recent decision denying the application has been appealed to Superior Court.

Board member Plummer asked about the timing of the public hearing on the proposed public boat ramp at Mere Point.

*The Executive Analyst stated that the hearing is scheduled for early November. The applicant and parties are currently collecting additional wetlands information. Supplemental information from the studies is due by mid-August.*

- |                                |          |
|--------------------------------|----------|
| <b>D. BOARD CALENDAR:</b>      | Reviewed |
| <b>E. DEPARTMENTAL ORDERS:</b> | Reviewed |
| <b>F. EXECUTIVE SESSION:</b>   | None     |

## **II CONSENT AGENDA ITEMS**

The consent agenda items 1 and 2 were approved as follows:

1. BEP Minutes, May 6, 2004

The Board voted (7-0-0-2) to approve.

*Board members Ernest Hilton, Nancy Anderson, Donald Guimond, Virginia Plummer, Richard Wardwell, Nancy Ziegler and Matt Scott voted to support the motion. Board members Irving Faunce and Jean T. Wilkinson were absent.*

2. BEP Minutes, May 20, 2004

The Board voted (7-0-0-2) to approve.

*Board members Ernest Hilton, Nancy Anderson, Donald Guimond, Virginia Plummer, Richard Wardwell, Nancy Ziegler and Matt Scott voted to support the motion. Board members Irving Faunce and Jean T. Wilkinson were absent.*

3. MAIETTA ENTERPRISES, INC., South Portland – Administrative Consent Agreement (BAQ)

The Board voted (7-0-0-2) to approve agenda item 3 as presented.

*Board members Ernest Hilton, Nancy Anderson, Donald Guimond, Virginia Plummer, Richard Wardwell, Nancy Ziegler and Matt Scott voted to support the motion. Board members Irving Faunce and Jean T. Wilkinson were absent.*

## **III. Regular Agenda**

1. CHAPTER 424, LEAD MANAGEMENT REGULATIONS / AMENDMENTS (post to written public comment)

Staff: Jamie Tansey, Bureau of Remediation and Waste Management

The Board voted (7-0-0-2) to post Chapter 424, Lead Management Regulation amendments to written public comment and to establish August 20, 2004 as the deadline for comments. The vote was taken pursuant to 38 M.R.S.A. Section 341-D and Section 1295.

*Board members Ernest Hilton, Nancy Anderson, Donald Guimond, Virginia Plummer, Richard Wardwell, Nancy Ziegler and Matt Scott voted to support the motion. Board members Irving Faunce and Jean T. Wilkinson were absent.*

2. CHAPTER 148, EMISSIONS FROM SMALLER SCALE ELECTRIC GENERATING RESOURCES / NEW (adoption\*)

Staff: Jeffrey Crawford, Bureau of Air Quality

The Board voted (7-0-0-2) on a motion to adopt New Chapter 148, Emissions from Smaller Scale Electric Generating Resources as modified:

- 4.(B) Low Sulfur Fuel Requirements.

Beginning on ~~January~~ June 1, 2010, no person...

The vote was taken pursuant to 38 M.R.S.A., Section 341-D and Sections 585 and 585-A.

*Board members Ernest Hilton, Nancy Anderson, Donald Guimond, Virginia Plummer, Richard Wardwell, Nancy Ziegler and Matt Scott voted to support the motion. Board members Irving Faunce and Jean T. Wilkinson were absent.*

3. FPL ENERGY MAINE HYDOR LLC / FLAGSTAFF STORAGE PROJECT (appeal decision)

Staff: Cynthia S. Bertocci, BEP Executive Analyst

Staff: Dana Murch, Bureau of Land and Water Quality

The Board voted (5-0-2-2) on a motion to approve the draft order granting the appeal of Maine Rivers, Trout Unlimited, Appalachian Mountain Club, and the Natural Resources Council of Maine and denying without prejudice the application of FPL Energy Maine Hydro LLC for water quality certification of the Flagstaff Storage Project. The vote was taken pursuant to 38 M.R.S.A., Section 341-D and 06-096 CMR Chapter 2.

*Board members Ernest Hilton, Nancy Anderson, Virginia Plummer, Richard Wardwell, and Nancy Ziegler voted to support the motion. Board members Donald Guimond and Matt Scott recused. Board members Irving Faunce and Jean T. Wilkinson were absent.*

**INFORMATIONAL SESSION:**

Climate Change

Staff: Malcolm Burson, Office of the Commissioner

Staff: Mike Karagiannes, Bureau of Air Quality

4. STATE PLANNING OFFICE / WEST OLD TOWN LANDFILL (Appeal - Presiding Officer's Ruling)

Staff: Cynthia S. Bertocci, BEP Executive Analyst

The Board voted (6-0-0-3) on a motion to affirm the presiding officer's ruling finding that We The People has standing to file an appeal of the license issued by the Department.

*Board members Ernest Hilton, Nancy Anderson, Donald Guimond, Virginia Plummer, Nancy Ziegler and Matt Scott voted to support the motion. Board members Richard Wardwell, Irving Faunce and Jean T. Wilkinson were absent.*

The Board voted (6-0-0-3) on a motion to affirm the presiding officer's ruling finding that Mr. Paul C. Schroeder has standing to file an appeal of the license issued by the Department.

*Board members Ernest Hilton, Nancy Anderson, Donald Guimond, Virginia Plummer, Nancy Ziegler and Matt Scott voted to support the motion. Board members Richard Wardwell, Irving Faunce and Jean T. Wilkinson were absent.*

The Board voted (6-0-0-3) on a motion to affirm the presiding officer's ruling finding that We The People filed a timely appeal of the license issued by the Department.

*Board members Ernest Hilton, Nancy Anderson, Donald Guimond, Virginia Plummer, Nancy Ziegler and Matt Scott voted to support the motion. Board members Richard Wardwell, Irving Faunce and Jean T. Wilkinson were absent.*

The Board voted (3-3-0-3) on a motion to include the Pine Tree Landfill Facility Customer Profile Detail Report for April 2004 in the appeal record for the limited purpose of depicting sample information of weight class / load class of material likely to be transported on haul routes to the West Old Town Landfill. – Motion Failed

*Board members Ernest Hilton, Nancy Anderson and Matt Scott voted to support the motion. Board members Donald Guimond, Virginia Plummer and Nancy Ziegler voted opposed. Board members Irving Faunce, Richard Wardwell and Jean T. Wilkinson were absent.*

The Board voted (4-2-0-3) on a motion to affirm the presiding officer's ruling finding that the proposed supplemental evidence, Pine Tree Landfill Facility Customer Profile Detail Report for April 2004, offered by appellant Paul C. Schroeder does not meet the criteria and is not admissible.

*Board members Donald Guimond, Virginia Plummer, Nancy Ziegler and Matt Scott voted to support the motion. Board members Ernest Hilton and Nancy Anderson voted opposed. Board members Irving Faunce, Richard Wardwell and Jean T. Wilkinson were absent.*

The votes were taken pursuant to 38 M.R.S.A. Section 341-D and 06-096 CMR Chapter 2.

5. STATE PLANNING OFFICE / WEST OLD TOWN LANDFILL (Request for Public Hearing)  
Staff: Paula Clark, Bureau of Remediation and Waste Management

The Board voted (3-3-0-3) on a motion to grant the request by We The People for a public hearing on its appeal of Department Order #S-20700-WD-N-A issued to the State Planning Office for an amendment for a vertical increase and the disposal of additional waste streams at the West Old Town Landfill. Motion Failed.

*Board members Ernest Hilton, Nancy Anderson and Virginia Plummer supported the motion. Board members Donald Guimond, Nancy Ziegler and Matt Scott opposed. Board members Irving Faunce, Richard Wardwell and Jean T. Wilkinson were absent.*

The Board voted (4-2-0-3) on a motion to adopt the draft proposed order denying the request by We The People for a public hearing on its appeal of Department Order #S-20700-WD-N-A with the following amendments:

*4.B.2. Contrary to We The People... to be of substantial public interest, ~~it did not assume jurisdiction.~~ ~~The~~ the only timely request that the Board assume jurisdiction of the project was withdrawn.*

*4.C.2. – Delete entirely*

*BASED on The above Findings of Fact, the Board makes the following CONCLUSIONS:*

- 1. Include language finding that Paul C. Schroeder is aggrieved and made a timely appeal.*
- 4. ~~The appellant We The People did not provide the information in its appeal required by regulation to be included as part of its public hearing request.~~ **In its discretion, the Board does not schedule a public hearing for any other reason.***

*Board members, Nancy Anderson, Donald Guimond, Nancy Ziegler and Matt Scott voted to support the motion. Board members Ernest Hilton and Virginia Plummer opposed. Board members Irving Faunce, Richard Wardwell and Jean T. Wilkinson were absent.*